

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PAN AMERICAN GRAIN COMPANY INC.;
PAN AMERICAN GRAIN MANUFACTURING
CO., INC.

Plaintiff,

v.

BERGE BULK SHIPPING PTE. LTD.;
WESTERN BULK CARRIERS AS; SAKAE
SHIPPING S.A.; THE STANDARD CLUB
U.K. LTD; NORTH OF ENGLAND
PROTECTION AND INDEMNITY
ASSOCIATION LTD.; NORTHSTANDARD
LTD.

Defendants

Civil Case No. 23-cv-1581 (SCC)

IN ADMIRALTY

**STATEMENT OF UNCONTESTED MATERIAL FACTS IN SUPPORT OF
BERGE BULK SHIPPING PTE. LTD.'S MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

COMES NOW Co-defendant Berge Bulk Shipping PTE LTD, ("BERGE"), through the undersigned counsel and very respectfully submits this Statement of Uncontested Material Facts in Support of its Motion for Summary Judgment at Dkt. No. 70 in compliance with L. Civ. R. 56(b).

1. Shoei Kisen Kaisha, Ltd. ("Shoei Kisen") and Berge Bulk Ltd. Bermuda entered into a New York Produce Exchange-approved Time Charter dated November 1, 2013 (the "Head Charterparty"). See Exhibit 1 at p. 1, lines 1-12.

2. Pursuant to the Head Charterparty, Shoeki Kisen or its guaranteed nominee, as owners of the then to be-constructed vessel, Newbuilding Motorship T.B.N. (S-H628) (the "M/V BERGE SCAFELL PIKE" or the "Vessel"), agreed to let Berge Bulk Ltd. Bermuda or its guaranteed nominee, as charterers, hire the Vessel from the time of delivery, "for 7 years plus/minus 30 days in Charterers' option plus 1 plus 1 plus 1 optional year." See *id.* at p. 1, lines 1-14.

3. Under the Head Charterparty, the Vessel was slated to be delivered “between 1st January, 2017 and 30th June 2017 in the Owner’s option.” *See id.* at p. 3, line 94.

4. Clause 26 of the Head Charterparty provides as follows:

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, **her seaworthiness and maintenance, acts of pilots or tugboats**, insurance, crew, and all other matters, same as when trading for their own account.

See id. at p. 5, lines 170-171 (Emphasis in the original).

5. On December 31, 2014, Berge Bulk Ltd. Bermuda, as charterer for the Vessel under the Head Charterparty, nominated Berge Scafell Pike Company. Inc. as “the new Charterer for the due performance of all the obligations under the said Time Charter Party.” *See id.* at p. 71 (Letter of Nomination dated December 31, 2014).

6. On August 27, 2015, the delivery time for the Vessel, as described in the Head Charterparty, was changed to: “between 1st July, 2018 and 31st December, 2018.” *See id.* at p. 74 (Addendum No. 5).

7. On February 6, 2017, the delivery time for the Vessel, as described in the Head Charterparty, was changed to: “between 1st January, 2020 and 30th June, 2020.” *See id.* at p. 75 (Addendum No. 6).

8. On February 28, 2018, Shoei Kisen, as the “Original Owners” of the Vessel, entered into a Novation Deed of the Head Charterparty with Sakae Shipping, S.A. (“Sakae Shipping”), as the Vessel’s “New Owners,” Tachibana Kaiun Co., LTD, as “Guarantor,” and Berge Scafell Pike Company Inc., as “Charterers.” *See id.* at p. 77 (Novation Deed dated November 1, 2013).

9. Pursuant to the Novation Deed, Sakae Shipping immediately substituted Shoei Kisen as the Original Owners of the Vessel, and the Head Charterparty “shall be constructed and treated in all respects as if [Sakae Shipping] were named in the [Head Charterparty] as the Original Owners instead of the Original Owners.” *See id.* at p. 78, clause 1.

10. The Novation Deed further provides that “[a]ll obligations of the Original Owners under the [Head Charterparty] shall be assigned, transferred and delegated to, and assumed by the New Owners in full and shall be observed, performed, complied with, met and/or satisfied solely by New Owners in every way as if the New Owners had been named therein as a party in place of the Original Owners.” *Id.* at clause 2.

11. The Vessel was delivered on March 18, 2020. *See* Exhibit 2.

12. Berge Scafell Pike Company, Inc. chartered out the Vessel to Berge Bulk Shipping PTE, LTD (“BERGE”) as charterer. *See* Exhibit 3 at p. 1, clause B.

13. On August 4, 2022, Western Bulk Carriers AS (“Western Bulk”) and Pan American Grain entered into a *North American Grain Charterparty* (the “PAG Charterparty”), for the transportation of soya bean meal and soya hull pellets from Argentina to San Juan, Puerto Rico. *See* Exhibit 4 at p. 1-3, lines 1-46 (North American Grain Charterparty 1973).

14. On September 23, 2022, BERGE, as disponent owner, sub-chartered the Vessel to Western Bulk under a voyage-charter (the “Western Bulk Voyage Charter”). *See* Exhibit 5 (Berge’s Initial Disclosures at 80-84); Exhibit 6 at p. 2, ¶ 7 (Unsworn Declaration Under Penalty of Perjury dated March 28, 2024).

15. BERGE and Berge Scafell Pike Company, Inc. entered into an agreement (the “Agreement”) to regulate their rights and obligations under and/or for the purposes of the [Western Bulk Voyage Charter].” The Agreement has an effective date of September 23, 2022. *See* Exhibit 3 at p. 1.

16. Pursuant to the Agreement, Berge Scafell Pike Company, Inc. and BERGE “shall be deemed to enter into a charterparty on a back-to-back basis with the terms of the [Western Bulk Voyage Charter].” *Id.* at p. 1, ¶ 1.

17. On that same day, September 23, 2022, Western Bulk nominated the Vessel to perform the PAG Charterparty. As per the First Addendum to the PAG Charterparty, Western Bulk informed Pan American Grain that the Vessel’s “Charter Party Chain” was as follows:

- *Head Owners name/legal address: Sakae Shipping S.A.*
- *Head Owners' managers name/legal address/contact details: Mitsuga Kaiun (HK) LTD.*
- *Head Owners P&I Club: The standard club*
- *Disponent Owners: Berge Bulk Shipping Pte Ltd*
- *Disponent Owners:*
Western Bulk Carriers AS
Henrik Ibsen gate 100
P.O. Box 2868 Solli
N-0230 Oslo, Norway.

See Exhibit 4 at p. 25 (First Addendum to North American Grain Charterparty).

18. On January 25, 2024, Pan American Grain Company, Inc. and Pan American Grain Manufacturing Co., Inc. (collectively "Plaintiffs"), filed a *First Amended Complaint* against BERGE, Western Bulk, Sakae Shipping, The Standard Club U.K. Ltd, North of England Protection and Indemnity Association Ltd., and Northstandard Ltd. See Docket No. 7.

19. As per the allegations of the First Amended Complaint, on November 20, 2022, at about 1725 hrs., while the M/V BERGE SCAFELL PIKE was executing a shifting maneuver, said vessel allegedly struck and collided with the Marine Tower at the Pan American Grain Terminal, supposedly causing substantial property damage to the Marine Tower, including the marine leg, in parts, and accompanying structures. *Id.* at ¶ 13.

20. On November 20, 2022, BERGE was not responsible for the navigation of the Vessel. The entity responsible for the Vessel's navigation pursuant to the Head Charterparty was Sakae Shipping. See Exhibit 6 at p. 2, ¶ 8; Exhibit 1 at p. 5, lines 170-171.

21. On November 20, 2022, BERGE had no control over and was not responsible for the "shifting maneuver" of the Vessel that supposedly caused the damages alleged by Plaintiff in the First Amended Complaint. See Exhibit 6 at p. 2, ¶ 9; Exhibit 1 at p. 5, lines 170-171.

Respectfully submitted.

In San Juan, Puerto Rico, this 20th day of September 2024.

CERTIFICATE OF SERVICE: It is hereby certified that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record which are CM/ECF system participants at their corresponding e-mail addresses and which, pursuant to Local Civil Rule 5.1(b)(2), constitutes the equivalent service.

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